

REMARKS

Claims 1-8, 17-22 and 52-66 are in the application for consideration.

The undersigned appreciates the Examiner's withdrawal of the previous prior art rejections.

Independent claims 1, 17, 52 and 60 stand rejected as being obvious over a combination of U.S. Patent No. 6,258,170 to Somekh et al. in view of U.S. Patent No. 6,143,679 to Nagasawa et al. Applicant disagrees and requests reconsideration.

It is acknowledged that Somekh et al. at col.19, lns.33,34 teaches that controlling the oxidizer flow rate controls the roughness of the film and crystalline phase in the chemical vapor deposition of a barium strontium titanate film. However, the implied teaching is clearly with respect to mechanical attributes of the film only, not with respect to film composition nor to effecting a change in relative atomic concentration of barium and strontium (Applicant's claims 1 and 52) or of titanium (Applicant's claims 17 and 60) within a deposited barium strontium titanate comprising dielectric layer. Clearly, no change in composition is taught, nor what if any change in composition would occur in varying oxidizer flow rate. The teaching is clearly only with respect to mechanical properties or attributes of the deposited BST film.

The Examiner relies on Nagasawa et al. in combination with Somekh et al. in reaching a conclusion of obviousness with respect to Applicant's independent claims 1, 17, 52 and 60. However, a person of skill in the art would not look to the teachings of Nagasawa et al. in practicing the invention of Somekh or that to which Applicant's claims are directed, nor would Applicant's invention be arrived at if the references were mistakenly so combined (which they have been). Specifically, the Examiner is reminded that Applicant's claims are

directed to a chemical vapor deposition method of forming a barium strontium titanate comprising dielectric layer. Nagasawa et al. is only directed to forming a different composition layer by a different method. Specifically, Nagasawa et al. teaches the formation of a bismuth containing layer of the general stoichiometric formula:



This material is not barium strontium titanate under any stretch of the imagination, even where the various illustrated variables include one or a combination of barium, strontium and titanium. Accordingly, a different material is taught to be fabricated than that which Applicant recites. The Examiner's statement in the last action that "Nagasawa teaches a layered film of BST . . . " is fundamentally in error.

Further, the method of formation of Nagasawa et al.'s different material is not by chemical vapor deposition, as is required in Applicant's claims. Rather, the formation method in Nagasawa et al. is by a self flux method, which is not chemical vapor deposition (col. 4, Ins. 45-54).

Accordingly, Nagasawa et al. is directed to forming a different material by a different method than that which Applicant claims.

A person of skill in the art would not look to this reference as having any applicability to the Somekh et al. teaching and is taught nothing thereby in the fabrication of the different material by chemical vapor deposition. Further, any alleged modification by the Examiner of the Nagasawa et al. to a chemical vapor deposition would change the fundamental principle of operation of the Nagasawa



et al. reference, rendering the teachings of such reference as not being sufficient to render the claims obvious pursuant to M.P.E.P. §2143.

The above conclusively establishes that the Examiner's assertions regarding the Nagasawa et al. reference and the obviousness conclusion in combination of it with Somekh et al. are in error. Accordingly for at least the foregoing reasons, independent claims 1, 17, 52 and 60 should be allowed.

Applicant's dependent claims should be allowed as depending from allowable base claims and for their own recited features which are neither shown nor suggested in the cited art. Action to that end is requested.

Additionally, there remains prior art which was submitted by Applicant but not initialed by the Examiner. Such art was cited in a PTO-1449 which accompanied a Supplemental Information Disclosure Statement (SIDS) signed by the undersigned on August 14, 2002, and which was filed with the Office on August 15, 2002 along with an RCE. Enclosed is a copy of said SIDS, Form 1449, the RCE Transmittal, return receipt postcard and Ex Post Declaration of Express Mailing as filed. Applicant requests that the Examiner consider the submitted art in accordance with the Rules and initial the same on the provided copy of the Form PTO-1449. Such is not seen to be discretionary. See MPEP §609.

This application is believed to be in immediate condition for allowance, and action to that end is requested.

Respectfully submitted,

Dated: 11/26/02

By: Mark S. Matkin

Mark S. Matkin
Reg. No. 32,268